

EEOC Judge Greenlights State Dept. Disability Bias Class

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By **Patrick Hoff** · Jun 6, 2022, 7:52 PM EDT ·

A U.S. Equal Employment Opportunity Commission judge on Monday certified a class of over 10,000 people who have been denied medical clearance by the U.S. Department of State because of a disability, rejecting the department's argument that the class is too broad.

In **her decision**, Administrative Judge Allyson S. Jozwik said that Karen Saba and the rest of the class all underwent the same process with the State Department's Bureau of Medical Services, referred to as MED, and that it doesn't matter what position they currently have or what their career path was.

"The nature of MED's approval process is at issue, not variables related to the individual seeking post approval," Judge Jozwik said. "It is undisputed that MED has repeatedly denied post approval to those with disabilities; MED's practice affects the whole class of disabled individuals who have sought post approval and were denied, regardless of where they came from or what their career goals were."

Saba initially filed a class complaint of discrimination with the EEOC in September 2011. She was denied approval to work for the United States Agency for International Development in Afghanistan because of her cerebral palsy, which severely limits speaking, mobility and other functions, according to Monday's decision.

MED has established a system of medical clearances to ensure that the resources available at a post and an individual's medical needs align, Judge Jozwik said. Saba was given a Class 2 medical clearance, meaning she had to receive clearance specific to each post she was assigned, and MED's assessment concluded she wouldn't be able to wear 40 pounds of body armor. Saba said, however, that MED never inquired about or tested her ability to do so.

Saba settled her claims against USAID in December 2018, which the State Department argued should preclude it from having to face her complaint. Though the suit was dismissed in May 2019, it was later reopened and reassigned after Administrative Judge Mary Beth Palmer died later that year. Saba filed for class certification in June 2021.

The certified class includes all applicants to and employees of the U.S. government who were denied medical clearance for an embassy, consulate or mission because of a disability by the State Department from May 2011 to the present.

In addition to Saba, Judge Jozwik certified two other class agents: John Fudala and Kevin Rosier. According to the decision, Fudala was assigned to a post in Sudan in March 2019 that was revoked in September of that year after he informed MED of a rheumatoid psoriatic arthritis diagnosis that changed his medical clearance to Class 2. Rosier, following a cancer diagnosis that forced him to work domestically in August 2018, received a Class 2 medical clearance in July 2019 but was denied for nearly half of the posts he applied for, the decision said.

Bryan Schwartz, who is representing the class, told Law360 there were many occasions where he and Saba could have walked away, but they didn't in the hopes of getting to Monday's decision.

"We're hopeful that we can make real change over there at the State Department," Schwartz said. "Sometimes trying to get the government, which is the biggest employer, to make changes is very slow, but when we're successful, we can have a major impact."

He said the next steps depend on what the EEOC decides to do, but his objective is to get the class list developed as soon as possible in order to get in touch with the class and start on discovery.

A spokesperson for the State Department declined to comment.

The class is represented by Bryan Schwartz and Cassidy Clark of [Bryan Schwartz Law](#).

Counsel information for the State Department was not immediately available.

The case is Karen Saba v. Anthony J. Blinken, case number 530-2012-00389X, before the U.S. Equal Employment Opportunity Commission.

--Editing by Abbie Sarfo.